

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0629P

Use Tax

Calendar Years 1992, 1993, 1994, and 1995

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in a letter dated December 4, 1997 protested the penalty assessed and stated it has timely filed and remitted applicable tax to the state. In addition this was the first sales and use tax audit of the taxpayer.

Taxpayer is a Delaware corporation with headquarters in New Jersey and a member of a large foreign group. Taxpayer has one location in Indiana.

Taxpayer was assessed Use Tax on clearly taxable items such as lift trucks to move pallets of bagged products after production and miscellaneous items. Taxpayer remitted approximately seventy percent (70%) of the tax due.

I. **Tax Administration** – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in remitting use tax on clearly taxable items.

Taxpayer failed to remit use tax on clearly taxable items and remitted approximately seventy percent (70%) in use tax during the audit period. Taxpayer was not previously audited under its current name, however it is one of many operations that have previously been audited.

Taxpayer protests the penalty and states it does not believe that the negligence penalty assessed is applicable based upon the audit results.

Taxpayer, however, must conform with the Indiana Tax laws when it does business in the state. Taxpayer's failure to remit thirty percent (30%) of the tax due is considered negligence.

The department finds no reasonable cause exists, therefore, the request for penalty waiver is denied.

FINDING

Taxpayer's protest is denied.